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May 19, 2004

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Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I write to request a congressional investigation into recent press reports which strongly indicate that the Justice Department, through the office of the Solicitor General, may have knowingly or recklessly communicated false and misleading information to the United States Supreme Court at oral argument in the *Padilla* and *Hamdi* cases. It is of paramount importance to our system of justice and the rule of law that all parties appearing before any court fulfill their duty of candor toward the court. When the Executive, through the Department of Justice, deceives the United States Supreme Court, our nation's highest court, it is a grave matter that cries out for congressional oversight.

The allegations levied against the Justice Department stem from recent exchanges occurring between Deputy Solicitor General Paul Clement and Justice Ruth Bader Ginsberg and Justice John Paul Stevens during last month's oral arguments in the *Padilla* and *Hamdi* cases. As part of those exchanges Justices Ginsberg and Stevens expressed concern over the risk that military detainees might be abused at the hands of their American captors.

In responding to these concerns, Deputy Solicitor General Clement made three important assertions. First, he contended that the executive branch should be trusted to, "make the kind of quintessential military judgements that are involved in things like that." Second, in responding to a question from Justice Stevens about whether there are legal constraints on the methods of interrogating enemy combatants, Mr. Clement said that "the last thing you want to do is torture somebody or try to do something along those lines." Finally, in response to a seemingly unconvinced Justice Ginsburg's declaration that some governments do engage in "mild torture" to get information, Clement replied by stating, "Well, our executive doesn't."

Honorable F. James Sensenbrenner, Jr.

Page Two

May 19, 2004

This latter assertion lies at the center of the current controversy. Just hours later, the first photographs of abuse of Iraqi prisoners at Abu Ghraib were published.

At a minimum, it is disturbing that the Solicitor General's office provided information that was clearly false, and others in the Justice Department knew to be false. More disturbing is the possibility that these remarks may have been part of a deliberate effort on the part of the Justice Department to mislead the Justices in cases that will undoubtedly be among the most important decided in our lifetimes. This is also an apparent violation of a fundamental tenet of legal ethics – the duty of candor toward the court.¹ After all, at the time of Clement's comments, many officials within the Bush administration were well aware that the Defense Department was investigating grave abuses at Abu Ghraib, the Brigadier General in charge of the prison had already been removed from her post, and, according to *The New York Times*, some of Clement's colleagues at the Justice Department were aware that the Bush administration had instituted policies that allowed the Central Intelligence Agency to use "severe" interrogation techniques on certain al-Qaida members.

Given the Judiciary Committee's primary oversight responsibilities over the Justice Department, it is imperative that our Committee take the lead in investigating these disturbing allegations. In addition to ascertaining the merits of such assertions, an investigation could also shed light on what information other officials within the Justice Department knew, and whether any information was intentionally withheld from the Solicitor General's office.

Sincerely,


John Conyers, Jr.
Ranking Member

cc: Honorable Orrin G. Hatch
Honorable Patrick Leahy

¹See e.g., American Bar Association, Model Rules of Professional Conduct Rule 3.3(a).
"A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."